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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,806	03/19/2004	Andreas S. Krebs	6631P010	8888
8791 7590 10/27/2010 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
UTAMA, ROBERT J				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
10/27/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/804,806

Applicant(s)

KREBS ET AL.

Examiner

ROBERT J. UTAMA

Art Unit

3715

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/XUAN M. THAI/

Supervisory Patent Examiner, Art Unit 3715

With respect to applicant's argument on the rejection under 35 U.S.C 101 on claims 22-23 and 26-30, the applicant argued that the limitation of "machine readable storage medium" is a much narrower claim than a claim toward "machine readable medium" and therefore should be distinguishable from a propagation medium and from any propagated signal. . The examiner respectfully disagrees. Firstly, the applicant's specification has not established what "machine-readable storage medium storing a set of instruction" entail. The applicant also argued that the propagated signals or energy waves are incapable of storing (information) and thus are not patentable subject matter. However, a reading from in re Nuijten does not support such conclusion. The examiner takes the position that some information can be stored in a non-transitory medium (i.e: electromagnetic waves or signals), however, it is true that such information would be considered to be volatile.

The rejection on claims 14 and 24 under 35 U.S.C 112 first paragraph have been withdrawn since the applicant have cancelled those claims.

With respect to applicant's argument on the rejection under 35 U.S.C 102(b) on claim 12 and 22; the applicant presented the following argument:

- The Baffes reference failed to a first of allocation data which correspond to a first function of the dynamic knowledge delivery program 100 (see page 10 paragraph 3)
- The Baffes reference failed to second allocation to a first function of the dynamic knowledge delivery program 100 ... (see page 10 paragraph 4).

The examiner would like to note that none of the disputed limitations were presented in claim 12 and 22. As such, the examiner takes the position that such argument to be moot since the applicant are arguing limitations that do not exist currently.

With respect to applicant's argument on the rejection under 35 U.S.C 102(b) on claim 12 and 22; the applicant argued that the Baffes reference failed to provide a teaching " Each of the sets of allocations data correspond to a different respective function in a set of function of an authoring tools. " However, both the previous rejection and Baffes reference already addressed this feature. For example, the Baffes reference set of allocation that refers to set of function of an authoring tools (see FIG 32-33 and col. 21:60-64). The Baffes reference provides a teaching of different allocation data that meet the limitation of claim 12 and 22. As such, the examiner takes the position that applicant's argument are not persuasive to overcome the prior art rejection under 35 U.S.C 102(b)